

ADR

ORIGINAL

Aly Tamboura
F-17843
San Quentin State Prison
P.O. Box 4999
San Quentin, CA 94974

In Pro Per

Filed

FEB 26 2008

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

ALY TAMBOURA,

Petitioner,

vs.

ROBERT L. AYERS, Warden, San Quentin
State Prison

Respondent.

C08 NO. 01143 JF
VERIFIED PETITION FOR
WRIT OF HABEAS CORPUS

Petitioner, Aly Tamboura (hereinafter "Tamboura"), files this Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. Pursuant to Local Rule 2254-3(d), Tamboura is using this form which contains all the information required by the standard form supplied by the clerk of this court.^{1/}

JURISDICTIONAL ALLEGATIONS

I. Tamboura is being unlawfully held in custody by the California Department of Corrections at San Quentin State Prison, San Quentin, California, by Robert L. Ayers, Warden of the State Prison. He is prisoner No. F17843.

II. Tamboura was convicted of the following counts and charges:

A. Inflicting corporal injury on a spouse. Cal. Pen. Code § 273.5(a)

1. Local Rule 2254-3(d) states: "Petitions shall be filed on a form supplied by the Clerk of the Court, and shall be filled in by printing or typewriting. In the alternative, the petition may be in a legible typewritten or written form which contains all of the information required by the court's form."

1 B. Criminal threats. Cal. Pen. Code, § 422. Prior CT 208-209.^{2/}

2 C. Petitioner admitted using a firearm during the commission of both
3 offenses. Cal. Pen. Code § 12022.5. Prior CT 208-209.

4 III. Tamboura was sentenced in the Superior Court for the County of Monterey in
5 California.

6 A. The case number was SS03233.

7 B. Tamboura plead no contest to the charges and admitted the firearm
8 enhancements.

9 C. On July 29, 2004 the court imposed and stayed a fourteen-year prison
10 sentence and placed Tamboura on probation for three years with various terms and conditions.
11 Prior CT 244-246.

12 D. On December 16, 2005 the court held a contested hearing and found
13 Tamboura was in violation of probation. Current CT 28-29.

14 E. On February 2, 2006, the trial judge sentenced Tamboura to state prison
15 for fourteen years. Current 2 RT 321.

16 F. Tamboura was represented at the contested probation violation hearing
17 by Tom Worthington, 215 W Alisal St., Salinas, CA 93901.

18 IV. Tamboura's post-conviction procedural history in the courts of the State of
19 California is as follows:

20 A. Tamboura filed an appeal to the California Court of Appeal, Sixth
21 Appellate District, No. H029922.

22 B. On June 25, 2007 the Court of Appeal affirmed the finding Tamboura had
23 violated probation and the prison sentence imposed.

24
25 2. The record in this case encompasses two appeals. The first appeal was after the original
26 guilty plea. "Prior CT" refers to the clerk's transcript on appeal in the prior case, No.
27 H027846. "Prior RT" refers to the reporter's transcript in the first appeal. "Current CT" and
28 "Current RT" refer to the transcripts in Tamboura's second appeal. The state court of appeal
took judicial notice of the record in the prior appeal.

1 C. In summary, the grounds raised in the automatic appeal included the
2 following:

3 1. The court violated petitioner's right to notice under the due
4 process clause when it found he had violated probation by engaging in prohibited second-party
5 contact with the victim when the document setting forth the probation conditions violated did
6 not allege this violation.

7 2. There was insufficient evidence of petitioner's ability to pay child
8 support during the first two months after his release from custody, and therefore insufficient
9 evidence he willfully failed to pay child support.

10 3. There was insufficient evidence to support the finding Tamboura
11 willfully violated the probation condition requiring him to stay at least 100 yards away from
12 his ex-wife's house.

13 4. The Court violated Due Process when it promised to impose the
14 suspended prison sentence regardless of the nature of any probation violation.

15 5. Petitioner was deprived of his constitutional right to an impartial
16 judge.

17 D. On August 1, 2007 Tamboura filed a Petition for Review, No. S154941,
18 in the California Supreme Court, raising the following grounds:

19 1. Does it violate Due Process when a judge promises a defendant
20 he will be sent to prison for any probation violation before it has heard any evidence;

21 2. Did the finding Tamboura had violated probation by failing to pay
22 child support violate Due Process when there was no substantial evidence to support a finding
23 of willful failure to pay.

24 3. Did the finding Tamboura had violated probation by going too
25 close to his ex-wife's home violate Due Process when there was no substantial evidence to
26 support a finding he knew he was within 100 yards of his ex-wife's house when he dropped off
27 his son more than a block away.

28 4. Did it violate Due Process when the court said it would not ignore

1 a probation violation about which Tamboura had no notice.

2 E. On October 10, 2007 the California Supreme Court denied Tamboura's
3 Petition for Review.

4 F. Tamboura was represented in his state court appeal by Paul Couenhoven,
5 staff attorney, Sixth District Appellate Program, 100 N. Winchester Blvd., Ste. 310, Santa
6 Clara, CA 95050.

7 V. Tamboura has no appeal or other proceedings pending in any other court
8 regarding these convictions. He has not previously filed any petition for habeas corpus in
9 federal court.

10 VI. To date, Tamboura has not yet had a post-conviction evidentiary hearing.

11 **INTRODUCTION**

12 VII. This petition concerns a case with numerous violations of a defendant's
13 fundamental right to due process of law. When Tamboura was placed on probation he was
14 ordered to pay child support and to stay at least 100 yards away from his ex-wife's home. He
15 earned no income while he was incarcerated for several months after being granted probation.
16 When he was released, it took him two months to get back on his feet financially. Initially he
17 had no vehicle to drive to work, and after he started working his first paycheck was seized by
18 the IRS. Within ten weeks Tamboura was current with child support payments, and remained
19 current thereafter. Despite the uncontradicted evidence Tamboura had no ability to pay child
20 support during the first two months after his release from custody, the state court found he had
21 violated that condition of probation. Imprisoning a defendant for failing to pay money when
22 there is no substantial evidence of a willful failure to pay violates Due Process.

23 On a night when Tamboura took his children out to dinner, he drove within a block of
24 his ex-wife's house and dropped off his son, who then walked home. The uncontested evidence
25 was that Tamboura drove to that spot only after his daughter expressed concern about her
26 younger brother walking home in the dark. The place where Tamboura parked was one street
27 over from his ex-wife's house. While he was within 100 yards as the crow flies, the path taken
28 by his son to walk home was more than 100 yards. The finding Tamboura willfully violated

1 probation violated due process since there was no evidence he knew he was within 100 yards
2 of his wife's home when he dropped off his son.

3 Before hearing any evidence in the case, the state court promised to send Tamboura to
4 prison no matter what violation was proved, serious or trivial. The court's prejudgment of the
5 case violated Tamboura's right to a probation revocation hearing before an impartial decision
6 maker. Finally, the court violated due process when it stated it could not ignore evidence that
7 Tamboura had violated a third probation condition, when that violation was never alleged before
8 the hearing was conducted.

9 These violations of Tamboura's fundamental right to Due Process require the reversal
10 of the finding he violated probation, and the prison sentence imposed as a result of that finding.

11 **CLAIMS FOR RELIEF**

12 **FIRST CLAIM FOR RELIEF**

13 VIII. The finding that Tamboura willfully violated probation and the resulting sentence
14 were unlawfully obtained in violation of the Fifth and Fourteenth Amendments because there
15 was no substantial evidence to support the finding he willfully failed to pay child support when
16 he had the ability to pay.

17 The facts and law supporting this claim include, but are not limited to, the following:

- 18 A. When Tamboura was place on probation on July 29, 2004 one condition of
19 probation was that he pay child support. Tamboura remained in custody until the
20 end of February, 2005. It was undisputed he was earning no income during that
21 time and had no ability to pay child support.
- 22 B. When Tamboura was released from county jail he was unable to work because
23 he had no transportation. Current RT 191, 193. He did not receive a pay check
24 from work until the end of March 2005, after a friend gave him a truck which
25 enabled him to return to work. There was no evidence Tamboura had the ability
26 to pay child support during March.
- 27 C. Tamboura's first paycheck was seized by the IRS. Current RT 193. While in
28 jail, Tamboura had asked the court for an early release so he could attend a

meeting with the IRS, but the court had denied that request. Current CT 14-17; Current RT 192. The uncontradicted evidence was that Tamboura lacked the ability to make a child support payment in early April since his first paycheck was not available to make a payment.

D. Tamboura made a payment of \$1,000 near the end of April, and another payment of \$320 in May. Current RT 196-197. The parties stipulated that as of May 17, 2005 Tamboura was current with child support payments, and remained current through the rest of the year until he was arrested. Current RT 197.

E. There was no evidence Tamboura had assets which he could have sold to get the money to pay child support. He no longer owned a home. When he was released from custody, rent was being paid by his fiancée and other roommates. He had no vehicle. His proprietary interest in a business was worthless because the liabilities of the business exceeded its assets and because the IRS had placed a lien against the business payroll.

F. The Due Process Clause of the Federal Constitution prohibits the incarceration of a defendant for failing to meet a financial obligation absent proof of a willful failure to pay and the ability to pay. *Bearden v. Georgia*, 461 U.S. 660 (1983).

G. The state court of appeal found sufficient evidence Tamboura had willfully failed to pay child support because he was employed as a scuba diving teacher, went on scuba diving trips to the Sea of Cortez and Santa Barbara, took his family out to dinner, threw a birthday party for his daughter, and owned 60 percent of the stock in a company. Court of Appeal opinion at 11, 13.

H. The uncontradicted evidence was that Tamboura's job as a scuba diving teacher provided no income; it only provided the opportunity for free diving trips when he worked as an instructor. 1 RT 217.

I. Tamboura's scuba diving trips occurred in September and October 2005. RT 189.

J. The dinners and the party cited by the court of appeal took place in September

2005. Current RT 20-21, 55, 67-68, 173-174, 183-184.

K. The uncontradicted evidence was that Tamboura's company stock was worthless because the IRS had levied his stock in the company and the company payroll and the company's liabilities exceeded its assets. Current RT 192, 193, 199.

L. The court of appeal violated due process when it unreasonably relied on a job which produced no income, evidence of financial stability in September and October 2005, and ownership of worthless stock to "infer that defendant had funds available from which he could have brought himself into compliance for March and April [2005] and did not." Opinion at 11.

M. The state court's decision was based on an unreasonable determination of the facts in light of the evidence presented in the state court proceeding. 28 U.S.C. § 2254(d)(2).

N. The state court's decision was contrary to, or involved an unreasonable interpretation of, clearly established Federal law, as determined by the Supreme Court of the United States. 28 U.S.C. § 2254(d)(2); see *Bearden v. Georgia*, *supra*, 461 U.S. 660.

SECOND CLAIM FOR RELIEF

IX. The finding that Tamboura willfully violated probation and the resulting sentence were unlawfully obtained in violation of the Fifth and Fourteenth Amendments because there was no substantial evidence to support the finding he willfully violated the condition he stay more than 100 yards away from his ex-wife.

The facts and law supporting this claim include, but are not limited to, the following:

A. One of Tamboura's probation conditions was that he not go within 100 yards of his ex-wife. The lower state court found Tamboura had violated this probation condition.

B. The court of appeal found substantial evidence to support the finding Tamboura willfully violated the stay away order because of two times Tamboura dropped off his son near his ex-wife's house. Opinion at 16.

- 1 C. A defendant has a due process right to not be incarcerated for a probation
2 violation absent evidence of a willful violation of probation. *Beardon v.*
3 *Georgia, supra*, 461 U.S. at p. 668. A finding of a willful violation must be
4 supported by substantial evidence. *People v. Rodriguez*, 51 Cal.3d 437, 443
5 (1990); *People v. Zaring*, 8 Cal.App.4th 362, 378-379 (1992).) ““Willfully
6 implies . . . that the person knows what he is doing, intends to do what he is
7 doing and is a free agent.” [Citation.]” *People v. Bell*, 45 Cal.App.4th 1030,
8 1043 (1996).
- 9 D. The finding Tamboura willfully violated the stay away order violated Due
10 Process because there was insufficient evidence he knew he was within 100
11 yards of his ex-wife’s house when he dropped off his son on two occasions, and
12 acted willfully intending to disturb the peace of his ex-wife.
- 13 E. On September 14, Tamboura dropped off his son one street over from where his
14 ex-wife lived after he had taken his family out to dinner. The trial court relied
15 solely on the September 14 incident in finding Tamboura had violated the stay-
16 away order. Current RT 264-265.
- 17 F. Tamboura, his teenage daughter and son and his fiancée went out to dinner on
18 September 14, 2005. Pursuant to the custody agreement, after dinner Tamboura
19 had to drop off his son at his mother’s house. Tamboura, his son and his
20 daughter all testified Tamboura was going to drop off Aly at the bottom of Lyric,
21 well out of the 100-yard prohibited zone. He drove further up Lyric only
22 because Samantha expressed concern about her younger brother walking home
23 in the dark. Current 1 RT 23 (Samantha); 68-69 (Aly); 185 (Tamboura). Mrs.
24 Tamboura agreed she did not want Aly walking the streets after nightfall. Current
25 1 RT 104. Thus, the undisputed evidence concerning Tamboura’s “intent and
26 motives . . . establish[es] that he was not volitionally guilty of any misconduct.”
27 *People v. Vickers, supra*, 8 Cal.3d at p. 461.
- 28 G. There was no substantial evidence Tamboura knew he was within 100 yards of

1 his ex-wife's home on September 14. Mrs. Tamboura lived on Yamato.
2 Tamboura never drove to Yamato; he only drove up Lyric, the next street over.
3 Even if Tamboura knew his ex-wife lived on Yamato, and that Yamato was one
4 block over from Lyric, most city blocks are more than 100 yards long. There
5 was no evidence Tamboura had ever gone to Mrs. Tamboura's house. Even if he
6 had, he had no way of knowing the exact distance when he parked one street
7 over. No one could see Mrs. Tamboura's house from where he parked. Fenced-
8 in houses and a whole block separated the parked car from Mrs. Tamboura's
9 residence. The only way to reach Mrs. Tamboura's home from the parked car
10 was to walk down Lyric, turn left at Primavera, turn left at Yamato, walk up two
11 houses and then cross the street to Mrs. Tamboura's house, a distance of more
12 than 100 yards. Current 1 RT 143.

13 H. The state court of appeal concluded that "both drop off points were within 100
14 yards of Mrs. Tamboura's house." (Opinion, p. 16.) In drawing this conclusion
15 the appellate court ignored the trial courts comments, as that court never
16 mentioned the September 10 drop-off when it found a violation of the stay-away
17 order. See Current 1 RT 264-265.

18 I. The lack of reliance on the September 10 incident by the trial court was due to
19 the state of the evidence. Aly Jr. and appellant both testified that on September
20 10 Aly was dropped off at the bottom of Lyric, several blocks from Mrs.
21 Tamboura's home. Current 1 RT 44, 46-47, 59-60, 176-178. The only witness
22 who said the drop-off point on September 10 was further up the hill, at a point
23 within the 100 yard limit was Mrs. Tamboura. She claimed that when she asked
24 Aly Jr. where appellant parked on September 10, he said it was at corner of Lyric
25 and Primavera. Current 1 RT 85-86. However, Mrs. Tamboura admitted that
26 when Lee asked if Aly could show him where his father parked on September 10,
27 she watched them go down the hill, heading towards the bottom of Lyric.
28 Current 1 RT 99. That contradicts her assertion Aly Jr. said the drop-off was at

1 the corner of Lyric and Primavera. Lee testified that when he asked if Aly could
2 show him where his father parked on September 10, Mrs. Tamboura said Aly and
3 Lee would have to go without her because she didn't want to walk that far. She
4 said it was quite a ways. Current 1 RT 140-141. Aly and Lee walked down the
5 hill. Aly showed Lee the September 10 drop off point, which was at the corner
6 of Branham and Lyric, not Primavera and Lyric. Current 1 RT 133, 140.

7 J. Given this evidence, it is not surprising the trial court never mentioned the
8 September 10 incident when it found appellant had violated the stay-away
9 order. There was insufficient evidence to support such a finding. There was no
10 substantial evidence to support the court of appeal's reliance on the September
11 10 drop-off.

12 K. Furthermore, the court of appeal failed to consider appellant's intents and
13 motives on September 10 and 14 when he drove near Mrs. Tamboura's house,
14 a critical factor in determining whether he was "volitionally guilty of any
15 misconduct." *People v. Vickers, supra*, 8 Cal.3d at p. 461.

16 L. It was undisputed that on September 10 and 14 Tamboura drove near his ex-
17 wife's house because of his son's needs, not because he was trying to harass
18 Mrs. Tamboura. It was undisputed that on September 10 he took Aly Jr. to get
19 some clothes, and then only after his son made repeated requests. Current 1 RT
20 55-58 [Aly Jr.'s testimony]; 80-81 [Mrs. Tamboura's testimony]; 173-178
21 [appellant's testimony].) On September 14 it was undisputed appellant drove up
22 Lyric and parked at the behest of his daughter, who did not want her younger
23 brother walking home in the dark after the family had gone out to dinner. Current
24 1 RT 23-28 [Samantha's testimony]; 68-69; 72 [Aly Jr.'s testimony]; 185-186
25 [appellant's testimony].) Samantha and Aly Jr. told him where to park. Current
26 1 RT 68-69, 185-186.

27 M. Furthermore, Aly Jr. was not even supposed to be with his father that night. He
28 was due to go to his mother's house when he overheard his father mention going

1 out to dinner. He asked to go along. Current 1 RT 66-67; 183-184. By the time
 2 they finished dinner, it was dark outside, causing concern about Aly, Jr. walking
 3 home in the dark. Current 1 RT 20-21, 68, 184. Thus, the drive up Lyric was an
 4 unexpected circumstance, not part of a plan to harass Mrs. Tamboura. The
 5 surrounding circumstances concerning appellant's intents and motives do not
 6 support a finding appellant *willfully* engaged in misconduct.

7 N. It was a violation of due process to imprison Tamboura for a probation violation
 8 since there was insufficient evidence he willfully violated probation. *Beardon*
 9 *v. Georgia, supra*, 461 U.S. at p. 668

10 O. The state court's decision was based on an unreasonable determination of the
 11 facts in light of the evidence presented in the state court proceeding. 28 U.S.C.
 12 § 2254(d)(2).

13 P. The state court's decision was contrary to, or involved an unreasonable
 14 interpretation of, clearly established Federal law, as determined by the Supreme
 15 Court of the United States. 28 U.S.C. § 2254(d)(2); see *Bearden v. Georgia,*
 16 *supra*, 461 U.S. 660.

17 **THIRD CLAIM FOR RELIEF**

18 X. The finding that Tamboura willfully violated probation and the resulting sentence
 19 were unlawfully obtained in violation of the Fifth and Fourteenth Amendments because
 20 Tamboura was deprived of his right to a hearing before an impartial arbiter.

21 The facts and law supporting this claim include, but are not limited to, the following:

22 A. Under the Due Process Clause of the United States Constitution a probationer
 23 is entitled to a probation revocation hearing before an impartial decision maker.
 24 *Morrissey v. Brewer*, 408 U.S. 471, 489 (1972), *Gagnon v. Scarpelli*, 411 U.S.
 25 778, 782 (1973) .

26 B. "[A]n impartial decision maker is one who . . . does not prejudge the evidence
 27 and who cannot say . . . how he would assess evidence he has not yet seen."
 28 *Patterson v. Coughlin*, 905 F.2d 564, 570 (2d Cir. 1990). Where the court

retains the discretion to continue probation even after finding a probation violation, “the . . . probationer is entitled to an opportunity to show not only that he did not violate the conditions, *but also that there was a justifiable excuse for any violation or that revocation is not the appropriate disposition.*” *Black v. Romano*, 471 U.S. 606, 612 (1985), italics added.

C. A judge who promises prison upon a probation violation finding, regardless of the circumstances, violates the probationer’s fundamental right to be tried by an impartial judge. *Gonzales v. Johnson*, 994 F.Supp. 759 (N.D. Tx. 1997).

D. Several times, both when petitioner originally pled, and when he appeared in court on the alleged probation violation, the state court said he would go to prison for any probation violation, no matter what the circumstances. These statements were made prior to any hearing where the court heard evidence about the nature of the alleged violations.

E. The following exemplify the court’s predetermination of the result before it heard any evidence on which to base its decision:

- “[W]hen you have a 14-year prison sentence suspended, that means, if you violate probation *in any way*, that you will go to state prison for the 14 years.” Prior 1 RT 27, italics added.
- “If you come back here, you go to prison . . . for 14 years.” Prior 1 RT 41.
- “[I]f you violate probation, you are going to prison and you will not be released. . . . It will be merciless.” Prior 1 RT 49.
- “If there’s a violation of probation, he’s going to prison for 14 years.” Current augmented RT 2.
- “If there’s a violation of probation, and *it doesn’t matter what kind of violation that is.*” *Id.* at 2-3, italics added.
- “Either there is a violation or there isn’t. If there is, he’s going to prison for 14 years.” *Id.* at 3.

- "There isn't any question, you violated probation. The Court made you a promise; you made me a promise. I'm living up to my promise, you didn't. Probation is terminated; defendant is committed to the Department of Corrections for the period of 14 years." Current 2 RT 320-321.

F. The court's promise to impose the suspended prison sentence, regardless of the nature of any probation violation, before it heard any evidence, violated Tamboura's due process right to a hearing before an impartial arbiter.

G. The state court of appeal reached the merits of this issue but also found Tamboura had defaulted the claim because he "did not raise the issue below." Opinion, p. 27. It held the issue was forfeited under the California Supreme Court's decision in *People v. Guerra*, 37 Cal.4th 1067 (2006). Opinion, at 27-28.

H. However, *Guerra* was decided one month after petitioner was sentenced. The procedural bar applied by the state court of appeal is not adequate.

I. A state procedural rule bars federal review only if it is adequate and independent. *Ford v. Georgia*, 498 U.S. 411, 418 (1991). An inquiry into the adequacy of a state procedural rule to foreclose federal review of a constitutional issue "is itself a federal question." *Douglas v. Alabama*, 380 U.S. 415, 422 (1965). "To be 'adequate,' the state procedural bar must be 'clear, consistently applied, and well-established at the time of the petitioner's purported default.'" *Melendez v. Pliler*, 288 F.3d 1120, 1124 (9th Cir. 2002), quoting *Calderon v. U.S. Dist. Court*, 96 F.3d 1126, 1129 (9th Cir. 1996).

J. At the time Tamboura was sentenced, the law in California was that a constitutional claim of judicial bias could be raised on appeal even when it was not raised below. See, e.g., *Catchpole v. Brannon*, 36 Cal.App.4th 237, 244 (1995); *In re Marriage of Iverson*, 11 Cal.App.4th 1495, 1504 (1992); *Pratt v. Pratt*, 141 Cal. 247, 252 (1903).

1 K. The state procedural bar applied in this case was not adequate since it was not
2 well-established when Tamboura was sentenced and had not been consistently
3 applied.

4 L. The state court's decision was contrary to, or involved an unreasonable
5 interpretation of, clearly established Federal law, as determined by the Supreme
6 Court of the United States. 28 U.S.C. § 2254(d)(2); see *Morrissey v. Brewer*,
7 *supra*, 408 U.S. at 489, *Gagnon v. Scarpelli*, *supra*, 411 U.S. at 782.

8 **FOURTH CLAIM FOR RELIEF**

9 XI. The finding that Tamboura willfully violated probation and the resulting sentence
10 were unlawfully obtained in violation of the Fifth and Fourteenth Amendments because the trial
11 court relied on part on a probation violation about which Tamboura received no notice.

12 The facts and law supporting this claim include, but are not limited to, the following:

13 A. The probation violation notice in this case Tamboura had violated probation by
14 disturbing the peace of the victim and by failing to comply with child support
15 payments. Current CT 21.

16 B. When it violated probation, the court said, "And then the Court doesn't ignore
17 a couple of other facts in making this decision . . . The wife's comment that she
18 knew before your son showed up that he was coming is because the daughter
19 called in advance . . . And that is a second-party contact all by itself." Current
20 RT 266.

21 C. The court was referring to a probation condition which prohibited any "contact
22 with the victim . . . including telephone, written or *second-party contacts* or via
23 computer." Prior 1 RT 39-40, italics added.

24 D. Tamboura received no notice that he had to defend against an allegation he
25 violated this probation condition.

26 E. In *Morrissey v. Brewer*, *supra*, 408 U.S. 471 the United States Supreme Court
27 held that parole revocation hearings have to comport with minimal due process
28 requirement, including "*written notice of the claimed violations of parole.*"

Italics added. In *Gagnon v. Scarpelli*, *supra*, 411 U.S. at p. 782, the high court extended the *Morrissey* protections to probationers. In 1985 the United States Supreme Court again stressed that the due process clause of the Fourteenth Amendment guaranteed a probationer facing a revocation hearing “*written notice of the claimed violations of his probation*” *Black v. Romano supra*, 471 U.S. at pp. 611-612, italics added.

F. The due process rights listed in *Morrissey v. Brewer*, *Gagnon v. Scarpelli* and *Black v. Romano* were violated in this case since Tamboura received no notice that he had violated probation by engaging in second-party contact with his ex-wife.

PRAYER FOR RELIEF

WHEREFORE, Tamboura prays that this Court:


1. Issue a writ of habeas corpus to have him brought before this Court, to the end that he might be discharged from his unconstitutional confinement and restraint;

2. Order respondent to answer this petition by specifically admitting or denying each allegation and claim made herein;

3. Require respondent to bring forth the entire state court record so that this Court can review those parts of the record that are relevant to this issue raised in this proceeding;

4. Grant such other and further relief as may be appropriate and necessary to dispose of the matter as justice may require.

Dated this January 31, 2008, at San Quentin, California.


Aly Tamboura
In Pro Per

VERIFICATION

I, Aly Tamboura state as follows:

That I am the petitioner in this case. My address is:

F-17843

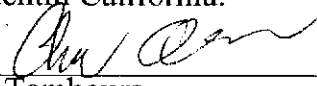
San Quentin State Prison

P.O. Box 4999

San Quentin, CA 94974

I verify under penalty of perjury that all information contained in this petition is true and correct.

Executed this January 31, 2008, at San Quentin California.


Aly Tamboura

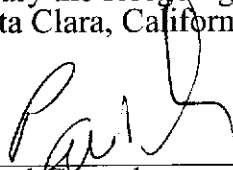
PROOF OF SERVICE

I declare that I am over the age of 18, not a party to this action and my business address is 100 N. Winchester Blvd., Suite 310, Santa Clara, California 95050. On the date shown below, I served the within VERIFIED PETITION FOR WRIT OF HABEAS CORPUS on the following parties hereinafter named by:

X Placing a true copy thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Santa Clara, California, addressed as follows:

Attorney General's Office
455 Golden Gate Avenue
Suite 11,000
San Francisco, CA 94102-7004
[Counsel for People of the State of
California]

I declare under penalty of perjury the foregoing is true and correct. Executed this February 22, 2008, at Santa Clara, California.



Paul Couenhoven